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In the Supreme Court of the United States

OCTOBER TERM, 1949

No. 368

LOUIS H. ROSENBLUM, PETITIONER

v.

UNITED STATES OF AMERICA

No. 369

MAX STRYK, PETITIONER

v.

UNITED STATES OF AMERICA

No. 370

JACOB WEISS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 275-282) was not reported. The opinion of the Court of Appeals (R. 386-402) is reported in 176 F. 2d 321.

JURISDICTION

The judgments of the Court of Appeals were entered on June 13, 1949. (R. 403, 404, 405.) Petitions for rehearing were denied August 24, 1949. (R. 406.) The time for filing a petition for a writ of certiorari was extended to October 7, 1949. (R. 412.) The petition for a writ of certiorari was filed on October 6, 1949. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254. See also Rule 37(b)(2) of the Federal Rules of Criminal Procedure.

QUESTIONS PRESENTED

1. Whether there was a fatal variance between the charge contained in the indictment and the proof.

2. Whether there was competent evidence in proof of net income.

3. Whether the evidence was sufficient to sustain the conviction.

4. Whether the petitioners were prejudiced by consolidation of the indictments for trial.

STATUTE AND RULES INVOLVED

Internal Revenue Code:

SEC. 145. PENALTIES.

* * *

(b) *Failure to Collect and Pay Over Tax, or Attempt to Defeat or Evade Tax.*—Any

person required under this chapter to collect, account for, and pay over any tax imposed by this chapter, who willfully fails to collect or truthfully account for and pay over such tax, and any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof be fined not more than $10,000, or imprisoned for not more than five years, or both, together with the costs of prosecution.

* * *

(26 U.S.C. 1946 ed., Sec. 145.)

Federal Rules of Criminal Procedure:

RULE 8. JOINDER OF OFFENSES AND OF DEFENDANTS.

* * *

(b) JOINDER OF DEFENDANTS. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count.

RULE 13. TRIAL TOGETHER OF INDICTMENTS OR INFORMATIONS.

The court may order two or more indictments or informations or both to be tried to-

gether if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information.

STATEMENT

Petitioners were charged in separate indictments, returned in the Southern District of Indiana, with having wilfully attempted to evade and defeat their individual income and victory taxes for the calendar year 1943 (R. 3, 5, 7), and were also charged with having conspired each with the other to attempt to defeat and evade large parts of the income and victory taxes due and owing by each of them to the United States for the calendar year 1943 (R. 8). The indictment returned against the petitioner Rosenblum alleged that he had understated his income in the amount of $173,738.32 and his tax liability in the amount of $139,269.41. (R. 3.) The petitioner Weiss was alleged to have understated his income in the amount of $120,967.82 and his tax liability in the amount of $100,651.30. (R. 5.) With respect to the petitioner Stryk, it was alleged that his income had been understated in the amount of $173,738.33 and his tax liability in the amount of $139,237.54. (R. 7.) In each of the indictments, gross income was itemized, and among these items were amounts

designated dividends and capital gain. (R., 5, 7.)[1]

In answer to questions raised by petitioners' motions for bills of particulars, the Government stated seven months before the trial (R. 52-56, 72) that it did not charge and would make no effort to prove upon the trial that the amount listed as dividends under the heading of "gross income" in the indictment represented corporate dividends; that the Government's position was rather that this money represented dividends or a division of money received by the petitioners from a joint venture or joint enterprise in which the petitioners were participants; and, further, that the Government would make no effort to prove that petitioners realized a capital gain in the amount alleged in the indictments, or in any other amount.

Over petitioners' objection, the four indictments were consolidated for trial. (R. 63.) Trial by jury was duly waived (R. 73), and, after a trial by the court, each of the petitioners was adjudged guilty as charged (R. 295-299). Each of the petitioners

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[1] The following figures relating to gross income were alleged:

	Rosenblum	Weiss	Stryk
Salary	$ 34,562.50	$ 5,000.00	$ 34,381.00
Dividends	145,022.72	120,967.82	145,022.74
Interest on bonds, notes, etc.	.....	2,286.27	225.00
Interest on Government obligations	285.86	.....	285.86
Capital gain	28,715.60	.....	28,715.59
Net profit from profession	.....	21,642.78	.....
Other income	4,109.97	3,967.81	4,778.80
Total income	$212,696.65	$153,864.68	$213,408.99

was thereupon sentenced to a term of imprisonment for three years and to pay a fine of $10,000 and one-third of the costs of prosecution on the substantive charges. (R. 295, 296, 297.) Each petitioner was also sentenced to a term of imprisonment for two years and to pay a fine of $10,000 and one-third of the costs of prosecution on the conspiracy charge, the sentence to begin at the expiration of the sentence imposed on the substantive charges. (R. 298-299.)

The evidence showed that during the year 1943 petitioners Stryk and Rosenblum were president and secretary, respectively, of Gary Wine and Liquor Corporation of Indiana (R. 92), and owners of all of the stock (R. 392).[2] Petitioner Weiss was its attorney. (R. 392.) Petitioners stipulated (R. 147) that Gary Wine and Liquor Corporation sold whiskey distributed by James B. Beam Company (R. 150), that during 1943 it sold 210 barrels and 6,584 cases of Beam whiskey for a total invoiced price of $159,826, and that in addition it received in over-ceiling payments cash totaling $99,799 (R. 393.) In addition to the over-ceiling payments so stipulated, it was proved that petitioners Rosenblum and Stryk received cash over-

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[2] For inclusion in the transcript of record, petitioners failed to provide any of the exhibits admitted in evidence at the trial. (R. 408-409.) It has therefore been necessary to rely upon the statement of facts contained in the opinion of the Court of Appeals with respect to the documentary evidence.

ceiling payments in the amount of $136,293 from Myers C. Ackerman and Alex B. Palffy. (R. 153, 154, 160.)

In June, 1943, petitioner Weiss entered into negotiations for the purchase of the capital stock of Judge and Dolph, Ltd., of Wisconsin. (R. 167.) This corporation was engaged in the wholesale liquor business. (R. 165.) At the time of these negotiations, Judge and Dolph had on hand approximately 2,400 barrels and 5,000 cases of whiskey. (R. 165.) A purchase price of $420,000 was finally agreed upon (R. 165-166), and petitioner Weiss paid $50,000 for a thirty-day option (R. 125), which payment was to be applied on the purchase price if the option were taken up (R. 167-168). The $50,000 paid by Weiss on the option was furnished by Rosenblum and Stryk from the proceeds of their over-ceiling sales of Beam whiskey. (R. 214, 215, 394.) Immediately thereafter, Staple, Inc., a dummy holding corporation (R. 136-137), was organized, with petitioner Weiss and his wife as the stockholders (R. 131), and the option obtained by Weiss was assigned to this corporation (R. 126). During further negotiations, attended by petitioners Rosenblum, Stryk, and Weiss, an agreement was entered into, whereby Staple, Inc., purchased all of the capital stock of Judge and Dolph, Ltd., for the sum of $420,000 and agreed to pay an obligation of $140,000 owing to Judge and Dolph of Illinois. (R. 163-164.) The

total purchase price was therefore $560,000. (R. 138.) Of the balance of $370,000 that was owing on the Judge and Dolph stock (R. 125), $334,000 was paid by Rosenblum and Stryk from funds realized through advance deposits for the purchase of this whiskey, and the remaining $36,000 was loaned by Weiss (R. 128.) These funds were advanced to Staple, Inc., under the guise of a loan from P & M Liquor Corporation. (R. 127-128.) The $140,000 obligation of Judge and Dolph was subsequently paid off by Weiss. (R. 137.) Rosenblum and Stryk gave Weiss $75,000 in Government bonds to secure a loan. (R. 396.) With these bonds as security, Weiss borrowed $75,000. (R. 216.) The balance was obtained through another loan of $65,000. (R. 138.) Subsequently, the name of Judge and Dolph, Ltd., was changed to Milwaukee Liquor Corporation. (R. 143.) When this obligation was discharged, petitioner Weiss received $126,000 worth of additional shares in Milwaukee Liquor Corporation, valued at $420 per share. (R. 143.) Milwaukee Liquor Corporation was still in business in 1945, with petitioner Weiss as its chairman. (R. 396.)

For the purpose of marketing this whiskey, petitioner Rosenblum induced one Sidney Prosterman and one Leo Mitteldorf to organize P & M Liquor Corporation. (R. 394.) It was agreed that P & M would sell at OPA ceiling prices whiskey furnished by Rosenblum, and that Prosterman

and Mitteldorf would be paid a commission of seventy-five cents per case on all sales made. (R. 176-180.) Prosterman actually made no sales of whiskey himself, but referred customers to Rosenblum. (R. 186.) The initial capital of $10,000 (R. 184) with which P & M Liquor Corporation started operations was furnished by petitioner Stryk (R. 185). P & M then entered into an agreement with Weiss and Staple, Inc., which provided for reimbursement for the purchase price of the Judge and Dolph stock and for the bottling and sale of the whiskey. (R. 126, 172, 394.) Under this agreement, P & M bought for $50,000 the bulk whiskey which was carried at $82,000 on the books of Judge and Dolph. (R. 133-135.)

At the trial it was stipulated that 25,990 cases and forty-five barrels of whiskey acquired from Judge and Dolph were sold for a total invoice price of $529,249, and that Rosenblum had received in cash over-ceiling payments which totaled $313,-036. (R. 171, 394.)

Taxpayers' accountant was called as a witness by the Government. (R. 93.) In the course of his examination he produced two schedules, which were identified as Government exhibits A-13 and A-14 and which purported to reflect expenses not claimed in the return. (R. 102, 103.) The information contained in these schedules was furnished by petitioner Rosenblum. (R. 102-103.) These exhibits were admitted into evidence, over the ob-

jection of Government counsel. (R. 121-122, 397.)

The money which P & M used to pay for this whiskey was furnished by Rosenblum from whiskey sales. (R. 191-192.) The income and declared value excess-profits tax return filed on behalf of P & M for 1943 reflected cost of whiskey in the amount of $848,961.02 and gross income of $974,-279.63. (R. 121.)

The corporate records did not reflect any of the over-ceiling receipts, and such receipts were not included in the corporate returns or in the individual returns filed by the petitioners for the year 1943. (R. 97, 121, 147.) Nor did petitioners disclose to the accountant who made out their returns the receipt of these over-ceiling payments. (R. 94, 95, 96, 123.)

In March, 1944, all three petitioners were interviewed by agents of the Alcohol Tax Unit of the Bureau of Internal Revenue, in connection with whiskey sales made to Ackerman. (R. 243.) At this interview, Rosenblum denied that he had received any side payments from Ackerman. (R. 395.)

In May and June of 1945, Weiss, Rosenblum, and Stryk all appeared before the Intelligence Unit of the Bureau of Internal Revenue and testified concerning their whiskey dealings. (R. 231.) Weiss described his close relationship with Rosenblum and Stryk in connection with Gary Wine and Liquor Corporation. (R. 395.) He stated that at their request he had participated in negotiations

which led to the purchase of Judge and Dolph, Ltd., of Wisconsin; that in working out the details of the contract there had been discussion that "there must be 'justification' for this whole picture in case inquiry should be directed against this transaction by the authorities * * *. We had agreed * * * that we would pay that price which eventually would be computed out, but that any dollars and cents * * * actually was to be reduced or increased to an even dollar figure so that the tracing would be difficult. * * * " (R. 395.)

Subsequently, Weiss stated that the "total price paid for the 116,509.83 gallons of whiskey paid by us to Judge and Dolph of Illinois [was] $403,869.62 * * * in addition to which we were to purchase the stock of the corporation for its net worth value which subsequently developed to be $30,068.88, and we agreed to pay off $140,000 * * * owed by Judge and Dolph of Wisconsin to Judge and Dolph of Illinois." (R. 395-396.)

Weiss further stated that, in addition to the $50,000 which Rosenblum and Stryk had handed him to pay for the option, they had given him $75,000 in federal bonds to secure a loan to use in paying the $140,000. "The money so received from Mr. Rosenblum and Mr. Stryk totalled $160,000." (R. 396.)

In these same interviews, Rosenblum admitted the receipt of $363,000 in cash in excess of the P & M invoice prices which amounted to $974,279. (R. 396.) This $363,000 he said was paid over to

Staple, Inc., to be used in payment of the whiskey and capital stock of Judge and Dolph, Ltd., of Wisconsin, and in reduction of the debt. (R. 396.) He further stated that, although he did not represent P & M in any way and had nothing to do with its operation or any share in its profits, he could guarantee delivery by it of any orders he took for the sale of liquor—that there was no agreement as to that, but an understanding. (R. 396.)

At the same series of interviews, Stryk stated that they had intended to report the income for tax purposes, but that "it became such a hot potato we didn't know how to. We intended to do it this year (1945). At that time we didn't know how to work it out." In case of a sale by Milwaukee Liquor Corporation, he "got a third of it." He denied ever handling any of the over-ceiling cash, but admitted putting packages given him by Rosenblum which he knew contained money into his safety deposit box. (R. 396.)

At the time of these interviews, Weiss was living in Milwaukee and gave as his occupation "chairman of Milwaukee Liquor Corporation." (This was the successor to Judge and Dolph, Ltd., of Wisconsin, which was thus still operating as a wholesale wine and liquor business.) (R. 396.)

After these interviews were had, petitioners, on August 11, 1945, filed a 1943 partnership return of income in the names of L. H. Rosenblum, Max Stryk, and Jacob Weiss. This return disclosed ordinary net income of $142,279.18. (R. 86.) At-

tached to the return was an explanation of the filing, which stated that it was to make clear that the transactions by Staple, Inc., were in fact those of Rosenblum, Stryk, and Weiss. (R. 396-397.) According to the evidence adduced by the Government, however, gross receipts from these black-market sales amounted to $586,178.97, against which were allowed expenses of $25,698.99. (R. 246.) This resulted in a joint-venture net income of $560,479.98 (R. 246), or $418,200.80 in excess of that reported in the joint-venture return. At the same time, Rosenblum, Stryk, and Weiss filed amended individual income-and-victory tax returns for the year 1943. (R. 86.) In these amended returns Rosenblum reported a taxable income of $86,384.72 and a tax liability of $55,426.16; Stryk reported a net income of $87,097.55 and a tax liability of $55,660.45; and Weiss reported a net income of $75,323.26 and a tax liability of $43,752. (R. 86.)

On appeal, the judgment of conviction was affirmed by the Court of Appeals for the Seventh Circuit with respect to the substantive charges, and was reversed as to the conspiracy charge. (R. 398, 403, 404, 405.)

ARGUMENT

I

Petitioners contend that they were convicted of a charge for which they were not indicted (Pet. 14), because the indictments upon which they were

tried alleged the receipt of "dividends" and the proof showed a failure to report as income profits from a joint venture (Pet. 16). In effect, petitioners argue that there was a fatal variance between the charge and the proof. The inquiry is, of course, not whether there has been a variance in proof, but whether there has been such a variance as to affect the substantial rights of the accused. *Berger* v. *United States,* 295 U. S. 78, 82. The indictments here charge the petitioners with having wilfully attempted to evade and defeat income and victory taxes due and owing by them for the calendar year 1943, in violation of Section 145(b), Internal Revenue Code, and alleged as the means the filing of false and fraudulent returns. (R. 3, 5, 7.) The indictments charged the offenses substantially in the language of the statute, and this has been held to be sufficient. *Capone* v. *United States,* 56 F. 2d 927 (C.A. 7th), certiorari denied, 286 U. S. 553; *Gleckman* v. *United States,* 80 F. 2d 394 (C.A. 8th), certiorari denied, 297 U. S. 709; *Tinkoff* v. *United States,* 86 F. 2d 868 (C. A. 7th), certiorari denied, 301 U. S. 689, rehearing denied, 301 U. S. 715.

The purpose of an indictment is to apprise the defendant of the offense with which he is charged and to stand as a bar to any further prosecution for the same offense. *Wilson* v. *United States,* 158 F. 2d 659 (C.A. 5th), certiorari denied, 330 U. S. 850. Petitioners' complaint is directed, not at the sufficiency of the indictment, but merely to

the allegation describing the nature of the income which they failed to report. Had this allegation which itemized gross income been eliminated, the indictment would still have sufficiently charged a violation of Section 145(b), Internal Revenue Code. *Cave* v. *United States,* 159 F. 2d 464 (C.A. 8th), certiorari denied, 331 U. S. 847. The allegations with respect to gross income were in effect surplusage. *Hall* v. *United States,* 168 U. S. 632; *Glover* v. *United States,* 125 F. 2d 291 (C.A. 5th), certiorari denied, 316 U. S. 690; *Leche* v. *United States,* 118 F. 2d 246 (C.A. 5th), certiorari denied, 314 U. S. 617, rehearing denied, 314 U. S. 712. Had the indictment alleged a failure to report *corporate* dividends, there might be some basis for petitioners' argument. The indictment, however, merely alleges dividends, the generally accepted definition of which is a division of profits. For petitioners to say that they were taken by surprise is clearly not supported by the record. The Government, in its answer to petitioners' motions for bills of particulars, explicitly stated that the term "dividends" in the indictment was used in the sense of a division of profits from a joint venture, and not in the sense of a distribution of corporate profits. (R. 53-56.) These answers were filed November 21, 1947, whereas the trial did not start until June 22, 1948, approximately seven months later. (R. 73.) In the light of these facts of record, petitioners' contention that they were

misled by the use of the word "dividend" evaporates completely.

Petitioners' fear that the indictments in question do not protect them from another prosecution for the same offense is equally baseless. Petitioners were convicted of wilfully attempting to evade and defeat their individual income and victory taxes for the calendar year 1943. Since the gist of the offense is the attempt to evade and defeat the tax, the means employed were a matter of evidence and not a necessary allegation in the indictment. Hence it would be immaterial whether the tax were due from unreported corporate dividends or from an unreported share of profits from a joint venture. *United States* v. *Miro,* 60 F. 2d 58 (C.A. 2d); *United States* v. *Simmons,* 96 U. S. 360. Clearly, petitioners were not prejudiced. Any error, defect, irregularity, or variance which does not affect substantial rights is disregarded. Rule 52, Federal Rules of Criminal Procedure for the District Courts of the United States. See also *Ragen* v. *United States,* 314 U. S. 513, 526.

II

Petitioners argue that the Government failed to prove that they had any net income for the year 1943. (Pet. 28.) Petitioners stipulated the receipt by Rosenblum and Stryk of $99,799 in cash side payments from the sale of Beam whiskey sold through Gary Wine and Liquor Corporation, and $313,036 by Rosenblum from the sale of Judge

and Dolph whiskey sold through P & M Liquor Corporation. (R. 393, 394.) By direct evidence, the Government proved additional black-market receipts of $136,293 on the sale of Beam whiskey. (R. 394-395.) Petitioners Rosenblum and Stryk were in control of Gary Wine and Liquor Corporation, and petitioner Weiss was its attorney. (R. 392.) Weiss was instrumental in carrying on negotiations which led to the acquisition and sale of the Judge and Dolph whiskey. (R. 167, 168, 207, 209.) In their interviews before the representatives of the Bureau of Internal Revenue, in the joint-venture partnership return, and in the amended individual returns filed in 1945, petitioners admitted their interest in the black-market proceeds from these ventures. (R. 392, 395-396.) It is clear that petitioners believed that they had realized income from these black-market transactions and that they were under an obligation to report such income and to pay the taxes due thereon.

The Government did not charge these petitioners with failing to pay a tax on gross receipts. All expenses which the investigating agents were able to find were allowed in determining net income. (R. 246.) The only evidence offered by defendants in proof of any additional costs was Government exhibits A-13 and A-14. (R. 102, 103.) These exhibits were admitted into evidence over objection of Government counsel. (R. 121, 122.) They were not substantiated in any way and were

at best a self-serving declaration on the part of petitioner Rosenblum. (R. 397.) The Government was entitled to rely upon the costs reflected in petitioners' returns, and, if they had additional costs, it was incumbent upon them to prove it. *Barrow* v. *United States,* 171 F. 2d 286 (C.A. 5th). Even if Government exhibits A-13 and A-14 had constituted competent evidence, the Government was not bound by this evidence, and the trial court was warranted in ignoring it. *United States* v. *Palese,* 133 F. 2d 600 (C.A. 3d); *United States* v. *Reginelli,* 133 F. 2d 595 (C.A. 3d), certiorari denied, 318 U. S. 783.

In the absence of competent evidence to the contrary, the Government was entitled to rely upon the costs claimed in the returns and reflected in the corporate records. *Barrow* v. *United States, supra.*

III

The evidence was sufficient to support the trial court's finding of guilt with respect to the substantive charges. Petitioners Rosenblum and Stryk were in control of Gary Wine and Liquor Corporation, and petitioner Weiss was its attorney. (R. 392.) By stipulation and direct evidence, the receipt by Rosenblum and Stryk of substantial black-market payments on the sale of Beam whiskey was established. (R. 393.) Large sums of money were furnished petitioner Weiss from this source for his use in acquiring the stock of Judge and Dolph of Wisconsin. (R. 124-140.) Weiss

was in control of Staple, Inc., which held the stock of Judge and Dolph, Ltd., of Wisconsin, and he arranged for the sale of the Judge and Dolph whiskey to P & M Liquor Corporation. (R. 206-208.) Weiss also received stock worth at least $126,000 in the Milwaukee Liquor Corporation. (R. 143.) This corporation was still in business in 1945. (R. 206, 396). This evidence and the inferences which could be drawn therefrom proved the *corpus delicti,* and provided an adequate foundation for the introduction into evidence of the subsequent admissions. *Wiggins* v. *United States,* 64 F. 2d 950 (C.A. 9th).

The amended individual returns were based on the partnership return. (R. 86.) These amended returns were properly admitted into evidence as admissions in proof of the substantive charges. *Emmich* v. *United States,* 298 Fed. 5 (C.A. 6th); *Heindel* v. *United States,* 150 F. 2d 493 (C.A. 6th). Under the same theory, the statements made by petitioners to representatives of the Bureau of Internal Revenue were admissible against the petitioner who made them.

When trial is by the court, intervention by the appellate court with respect to the sufficiency of the evidence is warranted only if it is shown that the trial court's findings are wholly unsupported by the evidence. *Blodgett* v. *United States,* 161 F. 2d 47 (C.A. 8th); *Cannon* v. *United States,* 166 F. 2d 85 (C.A. 5th).

IV

It was not error for the trial court to consolidate the indictments for trial. (R. 63.) Since the indictments were based upon the same series of transactions, they undoubtedly could have been included as separate counts in a single indictment, as provided by Rule 8(b) of the Federal Rules of Criminal Procedure for the District Courts of the United States. This having been so, the consolidation was permissible under Rule 13 of the Federal Rules of Criminal Procedure for the District Courts of the United States.

Where the defendants are charged with a substantive offense and with conspiracy and are tried without a jury, a refusal to grant separate trials is not error. *Long* v. *United States,* 160 F. 2d 706 (C.A. 10th). The joint character of the acts rendered a joint trial peculiarly appropriate. *Story* v. *United States,* 16 F. 2d 342 (C.A. D.C.), certiorari denied, 274 U. S. 739; *United States* v. *Interstate Properties,* 153 F. 2d 469 (C.A. D.C.); *Cataneo* v. *United States,* 167 F. 2d 820 (C.A. 4th). Petitioners complain that the consolidation resulted in the admission of statements and declarations made by the petitioners out of each other's presence. (Pet. 29.) This argument, however, ignores the fact that such statements and declarations were also admissible and binding upon the individual declarants with respect to the substantive offenses. In any case where a substantive charge and a con-

spiracy charge are consolidated for trial, such a result is likely to occur. This circumstance, however, does not provide a basis for ordering separate trials. *Hall* v. *United States,* 168 F. 2d 161 (C.A. D.C.), certiorari denied, 334 U. S. 853, rehearing denied, 335 U. S. 839. The trial court has wide discretion in a matter such as this. *Long* v. *United States, supra.*

CONCLUSION

The decision below affirming petitioners' conviction on the substantive counts is correct. No important question of law or conflict of decisions is presented. It is therefore respectfully submitted that the petition should be denied.

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